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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 TIMOTHY J. GODDARD,

9 Plaintiff,

10 v.

11 CSK AUTO, INC.,

12 Defendant.

Case No. C09-1391 MJP

ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND

13
14 This matter comes before the Court on Plaintiff's motion to remand. (Dkt. No. 18.)
15 The Court has reviewed the motion, Defendant's response (Dkt. No. 23), Plaintiff's reply
16 (Dkt. No. 26), and all other pertinent documents on the record. For the reasons set forth
17 below, the Court GRANTS Plaintiff's motion to remand.

18 **Background**

19 On August 25, 2009, Plaintiff Timothy Goddard filed a complaint in the Superior
20 Court of King County, alleging Defendants failed to pay certain required wages. (Dkt. No. 1,
21 Ex. A.) Plaintiff alleges causes of action for (1) violation of RCW 49.48 (id. ¶¶ 4.1-4.3); (2)
22 breach of contract (id. ¶¶ 5.1-5.4); (3) willful withholding of wages in violation of RCW
23 49.52 (id. ¶¶ 6.1- 6.4); and (4) unjust enrichment (id. ¶¶ 7.1- 7.4). The Complaint requests
24 damages in the form of unpaid wages, double damages under RCW 49.52.070, and statutorily
25 permitted attorneys' fees, but does not specify the total value of those damages. (Id.)

1 After receiving service on September 11, 2009, Defendant CSK Auto, Inc. (“CSK”)
2 filed a notice of removal on October 1, 2009. Defendant’s notice of removal offers the
3 following analysis of the amount in controversy:

4 Plaintiff asserts a claim against CSK Auto in an amount ‘estimated to exceed
5 \$20,000’, and has additionally requested double damages and attorney’s fees
6 pursuant to RCW 49.48.030 and RCW 49.52.70, as well as prejudgment
7 interest. In fact, the base amount at issue is \$28,361.38. Twice that amount is
8 \$56,722.76, and Plaintiff seeks interest and statutorily mandated attorney’s
9 fees on top of that amount in amounts that likely exceed \$18,277.24. The total
10 amount of Plaintiff’s asserted claims, therefore, exceeds \$75,000.00.

11 (Dkt. No. 1 ¶ 5.)

12 Discussion

13 Under 28 U.S.C. § 1332, federal district courts have subject matter jurisdiction over
14 civil actions between diverse litigants where “the matter in controversy exceeds the sum or
15 value of \$75,000.” The burden of proving the amount in controversy depends on what the
16 plaintiff has pleaded. First, if a plaintiff does not plead a specific amount of damages, a
17 removing defendant must “prove by a preponderance of the evidence” that the jurisdictional
18 minimum amount in controversy has been met. Lowdermilk v. U.S. Bank. Nat’l Ass’n, 479
19 F.3d 994, 998 (9th Cir. 2007) (quoting Abrego Abrego v. The Dow Chemical Co., 443 F.3d
20 676, 683 (9th Cir. 2006)). Second, if a plaintiff pleads an amount in excess of the minimum,
21 the amount in controversy “presumptively satisfied unless it appears to a ‘legal certainty’ that
22 the claim is actually for less than the jurisdictional minimum.” Id. (internal citations and
23 quotations omitted). Third, if the plaintiff alleges an amount below the jurisdictional
24 minimum, a removing defendant must overcome the presumption against federal jurisdiction
25 and demonstrate the amount in controversy to a “legal certainty.” Id. at 999 (applying
CAFA’s amount in controversy measure); see also 15 Moore’s Federal Practice § 102.107 (3d
ed. 2009) (observing that the Ninth Circuit has not yet determined the reach of the third
Lowdermilk scenario to non-CAFA cases) (citing Guglielmino v. McKee Foods Corp., 506
F.3d 696, 699 n.3 (9th Cir. 2007)). There is a “strong presumption against removal

1 jurisdiction” and the court must reject jurisdiction if there are doubts as to the right of
2 removal. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (citations omitted).

3 Even though the diversity statute provides that calculations are made without regard to
4 interest or costs, when the underlying substantive law provides for the award of attorney’s
5 fees, a party may include that amount in their calculation of the amount in controversy. Galt
6 G/S v. JSS Scandinavia, 142 F.3d 1150, 1156 (9th Cir. 1998). Thus, courts have taken into
7 account reasonable estimates of attorney’s fees when analyzing disputes over the amount in
8 controversy. See Brady v. Mercedes-Benz USA, Inc., 243 F. Supp. 2d 1004, 1010-11 (N.D.
9 Cal. 2002).

10 Though both parties appear to accept that the “preponderance of the evidence” inquiry
11 governs (Dkt. No. 18 at 3; Dkt. No. 23 at 3; Dkt. No. 26 at 2), Plaintiff’s briefing interweaves
12 analysis under the “legal certainty” standard. (Dkt. No. 26 at 2, 6.) Because the Complaint
13 does not plead a specific amount of damages, the Court applies the “preponderance of the
14 evidence” standard to determine whether the jurisdictional minimum is in controversy. See
15 Lowdermilk, 479 F.3d at 998.

16 There does not appear to be any dispute that the net amount of wages at issue is
17 \$20,714.70. (See Dkt. No. 23 at 2.) The governing statute, RCW 49.52.070, doubles the
18 “amount of wages unlawfully rebated or withheld” which yields a total of \$41,429.40. (Id.)
19 A related provision, RCW 49.48.030, provides that the prevailing party shall be entitled to
20 reasonable attorney’s fees. The Defendant thus bears the burden of demonstrating by a
21 preponderance of the evidence that Plaintiff’s claim for attorney’s fees will exceed
22 \$33,570.60. To this end, Defendant submits a declaration from Kelby Fletcher, who estimates
23 the number of hours Plaintiff’s counsel will spend prosecuting the case. (Fletcher Decl. ¶ 4.)
24 Fletcher goes on to estimate the attorney’s fees in the matter will likely range between
25 \$50,000 and \$82,500. (Id. ¶¶ 5-6.)

1 In response, Plaintiff's counsel submits a declaration comparing recent awards of
2 attorney's fees in similar cases that fall well below Defendant's estimates. (Jorgensen Decl.
3 ¶ 5.) Further, Plaintiff argues that an award of attorney's fees that is far greater than the
4 amount of wages at issue would not be reasonable. (Dkt. No. 26 at 5.) Plaintiff submits that
5 Defendant's estimates of deposition time and trial time are unreasonably high given the
6 uncomplicated nature of the wage claims. (Jorgensen Decl. ¶ 7.) In particular, counsel
7 suggests this wage dispute is more straight-forward than previous claims she has litigated
8 because Plaintiff's pay rate is not an issue. (Id. ¶ 6.) The Court is persuaded that Plaintiff's
9 counsel's own estimation of the work involved in litigating this dispute is at least as
10 reasonable as the one prepared by Defendant. As such, Defendant has failed to establish by a
11 preponderance of the evidence that the amount in controversy exceeds the jurisdictional
12 minimum. This Court lacks jurisdiction over this dispute and Plaintiff is entitled to remand.

13 Conclusion

14 Defendant has failed to establish by a preponderance of the evidence that the amount
15 in controversy exceeds the jurisdictional minimum required by 28 U.S.C. § 1332. The Court
16 GRANTS Plaintiff's motion to remand. (Dkt. No. 18.) Defendant has also filed a motion for
17 expedited discovery (Dkt. No. 17); however, the Court may not rule on that motion in the
18 absence of subject matter jurisdiction. The Court thus finds as MOOT Defendant's motion
19 for expedited discovery. (Dkt. No. 17.)

20 The Clerk is directed to transmit a copy of this Order to all counsel of record.

21 DATED this 18th day of November, 2009.

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24 Marsha J. Pechman
25 United States District Judge